would be in a position to pay them. Relying on this statement, they forbore proceedings to enforce payment. *Held*, that the solicitor has no defense to summary process for payment of the bill. *In re A Solicitor*, [1907] 2 K. B. 539.

The court took the position that whether or not the transaction created any legal or equitable right is immaterial; since the solicitor gave his word to pay, the court will compel him to do so. It is general law in this country that the remedy by summary proceeding lies only on the application of a client against his attorney. *Hess* v. *Joseph*, 7 Rob. (N. Y.) 609. It is also held that the latter may plead whatever defense he would have to an action. *Jones* v. *Miller*, 1 Swan (Tenn.) 151. A different view, however, prevails in England. The applicant need not be the solicitor's client. *In re Gee*, 2 D. & L. 997. Nor can the solicitor plead certain technical defenses, such as the statutes of frauds or of limitations. *In re Hilliard*, 2 D. & L. 919; *Ex parte Sharpe*, 5 Dowl. P. C. 717. This view is based on the theory that the process is to secure honorable conduct on the part of officers of the court when acting in that capacity, and that the legal validity of the undertaking is solely a secondary consideration. *Ex parte Bentley*, 2 Deac. & C. 578. The English doctrine seems better on principle, since the proceeding is primarily for the punishment of the attorney rather than for the relief of the client.

BANKRUPTCY — PREFERENCES — RETURN OF MISAPPROPRIATED FUNDS THROUGH MISAPPROPRIATING AGENT. — The president of a bankrupt corporation, just before failure, repaid to himself as agent of the defendant company money which he had secretly misappropriated for the use of the bankrupt corporation. Under § 60 of the Bankruptcy Act of 1898, if a preference is given and "the person receiving it . . . or his agent acting therein, shall have had reasonable cause to believe that it was intended thereby to give a preference," the trustee may recover the property. *Held*, that the trustee in bankruptcy cannot recover. *McNaboe* v. *Columbian Manufacturing Company*, 153 Fed. 967 (C. C. A., Second Circ.).

The general rule is that the knowledge of the agent is the constructive knowledge of the principal. *Wright* v. *Cotten*, 140 N. C. 1. But if the agent acts fraudulently toward his principal for his own benefit, the doctrine of constructive knowledge does not apply. *In re Marseilles, etc., Co.*, L. R. 7 Ch. 161; *De Kay* v. *Hackensack Water Co.*, 38 N. J. Eq. 158. Many courts say that in such cases there is a presumption that the agent will not communicate with the principal; but the true ground is that the agent is acting beyond the scope of his authority. *Allen* v. *South Boston Ry. Co.*, 150 Mass. 200; *contra*, *Frenkel* v. *Hudson*, 82 Ala. 158. In the present case, therefore, if the agent was acting beyond the scope of his authority he ceased to represent the defendant in the transaction, and the words in the Bankruptcy Act, "or by his agent acting therein," cannot as a matter of law make the defendant liable for his knowledge acquired in such transaction. It might be arguable that while the defaulter was not the defendant's agent to misappropriate the funds, he was its agent to collect the resulting debt of the bankrupt company, but the court seems correct in treating it as virtually one secret fraudulent transaction. *Lindsey* v. *Lambert Building Ass'n*, 4 Fed. 48.

BANKRUPTCY — PREFERENCES — RETURN OF PAYMENT TO DEBTOR PAYING IN IGNORANCE OF SET-OFF. — Bank A, shortly before bankruptcy, fraudulently appropriated the proceeds of a note it collected for bank B. Bank B, not knowing of the appropriation, collected a draft, as agent for A, and forwarded the proceeds, which were received by the assignee in bankruptcy. It appeared that the day before going into bankruptcy the partners composing bank A had declared that B "owes us as much as we do them. That is a stand-off." *Held*, that B may recover back enough of the fund forwarded to satisfy its claim. *In re Northrup*, 152 Fed. 763 (Dist. Ct., N. D. N. Y.).

If the conversation between the partners is interpreted as setting aside A's claim against B in trust for B, it would seem to create a preference. It is true that B, if sued, could set off its claim against A, under § 68 of the Bankruptcy Act of 1898 providing for the set-off of mutual debts and mutual credits. See

Goodrich v. *Dobson*, 43 Conn. 576. A's claim is, nevertheless, absolute, and must be paid by cash or set-off; hence it is a part of his assets to which the general creditors are entitled. It cannot be said that a claim to which there is no defense is of no value merely because the debtor may invoke his right to set-off. On the other hand, it may be urged that A, by receiving the money, fraudulently permitted B to destroy his set-off and therefore held it in trust, as when a bankrupt receives goods knowing of his insolvency. In the latter case, however, the bankruptcy would be a good ground for refusal to deliver, while in the present case, again applying the same reasoning, A had an absolute right to receive payment, either by cash or set-off, which should be devoted to the interests of the general creditors.

BANKRUPTCY — PRIORITY OF CLAIMS — INFANT'S CLAIM AFTER AVOIDANCE OF CONTRACT. — An infant obtained a bill of sale from a bankrupt to secure advances previously made, and after his claim of preference by virtue of such bill of sale had been disallowed, he elected to avoid his contract and claimed the whole amount advanced, on the ground of his infancy. *Held*, that he is entitled only to claim as a general creditor. *In re Huntenberg*, 153 Fed. 768 (Dist. Ct., E. D. N. Y.).

A creditor who has received a preference and has been compelled by judgment to surrender it, may nevertheless prove his claim against the estate. *Keppel* v. *Tiffin Savings Bank*, 197 U. S. 356; see 19 HARV. L. REV. 59. And the avoidance of his contract by an infant who has advanced money is effective only to constitute him a creditor for the amount, which he may immediately recover in assumpsit. See *Robinson* v. *Weeks*, 56 Me. 102. His claim, in such an event, does not appear superior to that of the ordinary creditor. Consequently, as infancy is not a ground for priority in payment from the estate under § 64 of the Bankruptcy Act, which provides for priorities, the result reached in the present case seems eminently sound.

BANKRUPTCY — PROVABLE CLAIMS — PROOF AFTER TERMINATION OF COLLATERAL LITIGATION. — An attachment suit pending at the time of bankruptcy against the bankrupt at the suit of a creditor did not terminate within a year and thirty days after the adjudication. *Held*, that the creditor is entitled to prove his claim after the termination of the suit. *In re Baird*, 154 Fed. 215 (Dist. Ct., E. D. Pa.).

§ 57 *n* of the Bankruptcy Act of 1898 provides that "claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment." The court in the present case expressly defers to the authority of a recent case which interpreted this exception clause to mean, "if . . . the final judgment therein is rendered within thirty days before the expiration of such time, or at any time thereafter." *Powell* v. *Leavitt*, 150 Fed. 89. This departure from the explicit and unambiguous terms of an exception clause, evidently intended to be prohibitory and to ensure a speedy settlement of the estate, is in violation of the first principles of statutory construction requiring strict interpretation of such clauses. See *U. S.* v. *Dickson*, 15 Pet. (U. S.) 141, 165. If provision is needed for such a contingency as the case presents, it is a matter for legislative discretion, not for extraordinary judicial license.

CARRIERS — CONNECTING LINES — THROUGH RATES. — Goods were shipped on a through bill of lading over connecting railroads which did not give joint through rates. While the goods were in transit over the first railroad, the second lowered its rates. *Held*, that the shipper must pay the combined rate existing at the time he shipped and cannot take advantage of the reduction. *In the Matter of Through Routes and Through Rates*, 12 Interst. C. Rep. 190.

When two railroads have agreed to establish through routes between points in separate states, the charge they make is to be regarded as a unit. See *Brady* v. *Penn. Ry. Co.*, 2 Interst. C. Rep. 78. Recognition of a through bill of